

Closed 8/25/08
Doc #3

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

GAVIN BLACKMAN,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

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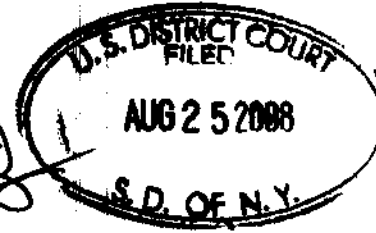
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CIVIL

JUDGMENT

08 Civ. 3950 (KMW)

SCANNED

By order dated April 28, 2008, this Court determined that the proper jurisdictional basis for petitioner's motion was 28 U.S.C. § 2255, since he was seeking to challenge the validity of a conviction imposed by a federal court. Therefore, the Court advised petitioner that notwithstanding the designation of the motion, that it would be construed as an application under § 2255, and informed him that he may withdraw the motion if he did not wish to pursue relief under § 2255. See Adams v. United States, 155 F.3d 582 (2d Cir. 1998) (per curiam). In addition, the Court directed petitioner, if he chose to pursue relief under § 2255, to show cause by affirmation within 60 days why the instant motion should not be dismissed as untimely pursuant to the one-year statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2255. Since petitioner has failed to file an affirmation as specified, it is,

ORDERED, ADJUDGED AND DECREED: That the motion be and it is hereby dismissed without prejudice. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253. I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Court's order would not be taken in good faith.

Kimba M. Wood

KIMBA M. WOOD
 Chief Judge

Dated: *8/25/08*
 New York, New York

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON *8/25/08*